[*Reprinted from the* FORTNIGHTLY REVIEW, *April*, 1909.]

THE HOUSE OF LORDS AND TAXATION.

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Being an attempt to examine the position of the House of Lords in reference to Money Bills and Taxation.

SEVEN hundred years ago—in 1225, to be exact—the Crown of England, as in more modern times, found itself in need of money, and, through the mouth of the Justiciary, made its need known to its faithful lieges assembled at Westminster. The faithful lieges granted the money, but subject to a bargain. If the King would assure to the people certain liberties the people would give to him a fifteenth part of all their movables. The bargain was concluded. But by whom? The ancient chronicler, Roger de Wendover, tells us. "The Archbishop, and the whole assembly of the Bishops, Earls, Barons, Abbots, and Priors, after deliberating, answered that they would gladly grant the request, subject to the assurance of the aforesaid liberties"; and the King agreed to "that which the Magnates asked."[1] Put in modern language, the Crown wanted revenue, and the House of Lords, after deliberating as to terms, granted it—on behalf of the people, and binding the people.

This also, stated in other words, is the conclusion arrived at by an historian of the House of Lords. After relating the episode, Mr. L. O. Pike comments on it thus:—"It is clear, both from the attestation of the charters and from the words of the chronicler, that the final bargain was effected

[1] Roger de Wendover, *Flores Historiarum* (Rolls series), Vol. II, p. 282.

between the King on the one hand and the nobles and Church dignitaries on the other. . . . In some way a bargain was struck between the King and the Bishops, Earls, Barons, Abbots, and Priors, which had the effect of binding all classes."[1]

Now that the alleged impotence of the House of Lords to handle financial legislation has come again within the radius of political discussion, this episode of Henry III's reign is worth recalling. And in case the reader of modern practical habit of mind should object that the story has a somewhat musty flavour, it may be replied at once that its age does not detract from its importance, for the reason that the monopolistic claim of the Commons to deal with finance is directly based upon immemorial custom and ancient usage. If their claim lacks antiquity, it lacks substance.

Let us get clearly before us again just what happened. The King was holding his Christmas Court, and by Hubert de Burgh, his Justiciary (the officer of State who then exercised the functions of the modern Chancellor of the Exchequer), he made known his financial requirements for the kingdom's government. It was not to the knights or the freeholders or burgesses that the appeal was made directly (though the grant was also from them—*omnes de regno nostro*), but to those "Magnates" who have formed ever since (with the exception of the disestablished Abbots and Priors) the House of Lords; and it was these same magnates who made the grant. This fact is so notable that it has excited the ingenuity of the commentator upon the old chronicle. Mr. Pike, for example, is fain to read into the narrative some explanatory words. He suggests that "it is possible that some members of the clerical body (whom the chronicler describes as the clergy) and some knights responding to a general summons, according to the terms of John's great Charter, may have been at hand, if not in the same chamber with the magnates. They may have signified to the Earls, Barons, and clerical dignitaries their willingness to accept the proposed bargain, and the latter may then, 'after deliberation,' have assented to it. But there is no evidence," he admits, "of any such transaction."[2]

But let us accept Mr. Pike's suggestion, as it is only reasonable in the light of subsequent history that we should, and assume that the magnates did not agree to the general taxation of the people until after consultation with such of the more direct representatives of the people as were at hand. We might

[1] *Constitutional History of the House of Lords*, p. 339.
[2] *Ibid.*, p. 338.

even go further than the evidence at all warrants, and allow an assumption that without the assent of these popular representatives there would have been no taxation. Even so, we get not the remotest suggestion of the doctrine of the Commons' privilege to exclude the Upper House from participation in determining the character and amount of taxation.

Let us take a step forward in history—to the year 1341. There was war taxation in that year—a grant of ninths. It was made by Prelates, Earls, Barons, and Commons.[1] Parliamentary institutions had by that time solidified, and the people, as distinct from the nobles and Church dignitaries, had their own official representation. But there is no trace of any claim by them of an exclusive right, as against the Lords, to determine the extent of the supplies to be granted. At times, indeed, they seem to have taxed themselves independently, just as the clergy did in their Convocation; but where the taxation had a national rather than a sectional character we soon find the two Houses joining in the grant. That there should have been any division is explained by the special taxation which always fell upon the Lords—the incidents of their knight service. When, because of national emergency, the Lords made grants over and above these services, they had a voice in the matter; the Commons did not presume to tax them without their consent.

It is true that the later history of the relations between the two Houses indicates an obscuring of the Lords' right. I am not referring to the often-quoted dispute at the Parliament of Gloucester, in 1407, when the Commons objected to the Lords initiating certain taxation proposals, because it seems that the aids then proposed—a tenth and a half from the cities and boroughs, and a fifteenth and a half from the lay people—was an attempt by the Lords to propose taxation which was not of a universal character, but concerned the special taxation of other classes whom the Commons specifically represented. Further, the trouble in that case arose apparently from the manner, rather than the matter, of the Lords' proceedings; the *amour propre* of the Commons was offended by the King consulting the Lords in the first instance concerning his financial requirements, and then summoning a deputation from the Commons to attend in the Lords' Council Chamber to learn the result of the Lords' deliberations. And in these days, be it remembered, the Commons could only tax themselves, not the Lords—an additional reason for claiming the right, as against the Lords, to initiate their own taxation. I am referring rather to later developments. Ignoring the reason why the proposals for taxation

[1] *Constitutional History of the House of Lords*, p. 339.

originated in the Commons and were sent to the Lords for assent—the reason, namely, that at first the taxation of the people was customarily a separate thing from the taxation which the Lords paid—the Commons began in the seventeenth century to claim an exclusive privilege of deciding the nature and details of taxation, even though that taxation were general and levied upon Lords and commoners alike. The new development, curiously enough, dates from the abolition at the Restoration of feudal tenure, with its obligation upon the great landholders to provide the military service of the country. It was about this time, too, that the clergy ceased to tax themselves separately.

The seventeenth century was the birth-time of the middle class; and the new class was an extraordinarily vigorous infant, and was nurtured in a stormy, stressful period, where its growing vigour displayed itself in violent iconoclasm and truculent assertions of rights, some genuine, some not. The self-aggrandisement of the House of Commons was the keynote of that time, and in view of the other performances of that extremely self-conscious and quarrelsome body, it is not surprising to find it straining the Constitution in the direction of claiming for itself exclusive privileges in regard to taxation—that subject being the stumbling block of offence in the great quarrel with the Crown. Remembrance of all this must induce a critical attitude towards seventeenth-century precedents for introducing Single Chamber Legislation into public finance.

The first claim of the seventeenth-century Commons was that taxation proposals must originate in their House, and, obtaining a tacit acquiescence in that claim, their appetite grew, and they brought forth their second claim—that the Lords should not amend any taxation proposals which the Commons might send up to them. The two claims were put forward in connection with one matter in 1661. In that year the Lords introduced, and passed through their own House, a Bill to provide for the paving of Westminster. The Commons would not receive it, on the ground that it laid a charge upon the people, "and it was a privilege inherent in their House that Bills of that nature should first be considered there." They prepared, and sent up to the Lords, a Bill of their own, and when the Lords amended it by the insertion of a clause, the Commons refused to accept the amendment, alleging that their privileges were again being infringed.

This, at any rate, was absolutely a new claim, and we have Maitland's authority for the statement that "it was not until after the Restoration that the Commons begin to contend that the Lords can make no alteration in a money

Bill, but must simply accept it or simply reject it."[1] And he writes in another passage, "It is difficult to find any principle upon which this so-called privilege of the House of Commons can be founded."[2] It is now becoming recognised that Maitland stands in the very front of English Constitutional historians; and he has, by his immense knowledge and legal and historical acumen, dispelled more than one modern superstition. These words of his, therefore, tell very heavily against the easy assumptions made by some other writers.

The Lords made a stand at the second demand of the Commons; they quoted precedents of the previous century in proof of their right to amend money Bills, and declined to give way; and as the Commons were equally insistent, the proposed legislation had to be abandoned.

But there are more important works than street-paving—matters where a deadlock, continued to the point of omitting legislation, would entail serious consequences, and it is in regard to them that the Commons have scored victories by trading on the patriotism of the Peers. There was a notable instance in 1677. The Lords had made some amendments in a Supply Bill for building warships. The Commons affected to "disallow" them, and maintained their attitude even when the Lords courteously gave their reasons. But the nation needed the ships, and the Lords, showing the Commons an example of patriotism, gave way. But at the same time they formally reiterated their right to amend by an address to the King, which set forth that the Commons had "put upon us the extreme difficulty either of shaking our privileges by withdrawing our amendments, or of hazarding the safety of the nation by letting a Bill fall that is necessary to this time." They yielded "out of tenderness that the whole may not suffer by our insisting on *that which is our undoubted right*."[3]

This solemn and emphatic assertion by the Lords of their ancient rights is worth remembering, not only for its own sake, but also as a set-off against the resolutions of a contrary character which it had pleased the House of Commons from time to time to pass—as in 1671, and again in 1678, in the famous resolution that all aids and supplies are the sole right of the Commons; that all Bills for granting them ought to originate in the Commons; and that the House of Lords ought not to alter them. But a resolution of one House cannot alter the Constitution, or interpret any part of it in a binding sense,

[1] *Constitutional History of England*, p. 247. [2] *Ibid.*, p. 310.

[3] *Journals of the House of Lords* (Vol. XIII, p. 119), quoted by Mr. Pike in his *Constitutional History of the House of Lords*, p. 345.

even though the other House remain silent. In this matter of money Bills, however, the other House has not remained silent. It, in its turn, has proclaimed its rights in a sense contrary to that sought by the House of Commons.

That the Lords have been less frequent in their protests against the Commons' infringement of their ancient rights, and that in particular instances they have often assented to the Commons' demands, cannot be taken as concluding the question. Nothing is more common in disputes of any kind—public or private—than for one party to asseverate its contention with wearisome reiteration, and for the other party to reply infrequently; and the observer does not on that account mistake volubility for strength, or appraise the contending arguments according to the number of times each is stated. Adhesion, therefore, to the Commons' claims cannot be given merely because the Commons' journals may contain more instances of the Lower House asserting its claim than of the Upper House repudiating it.

It may be worth while to recall one or two instances of successful resistance by the Lords and submission by the Commons.

On two occasions in the eighteenth century the Lords took exception to messages from the Crown for pecuniary aid being sent exclusively to the Commons; and now such messages are presented to both Houses.[1] At one time the Commons attempted to exclude the Lords from inquiries into public expenditure, methods of taxation, and financial administration by not transmitting to them reports and papers, or by declining to permit the attendance of a member to give evidence on such subjects before a Select Committee of the Lords. But for the last forty years past they have abandoned that form of boycotting.[2]

In 1838 the Commons had before them the Lords' amendments, many of which infringed the privileges claimed by the Commons, and Speaker Abercromby (the official guardian of the privileges of his House) stated that "as the principle of rating was necessarily incidental to such a measure . . . if the privileges of this House were strictly pressed in such a case, they would also tend to prevent the House of Peers from taking such a measure into its consideration in a way that might be, on all grounds, advisable."[3] The Commons fell in with this sage advice, and waived their claim; and in like circumstances they followed the same course in 1847, and

[1] *May's Parliamentary Practice*, 11th ed., p. 573.
[2] *Ibid.*, 574.
[3] 44 *H.D.*, 3rd series, p. 575.

again in 1849, though the Lords' amendments to these Bills not only omitted provisions, "but by distinct enactment changed the area, and therefore the burthen, of local taxation, and imposed rates higher than the rates fixed by the House of Commons."[1] And in the case of certain amendments with which they disagreed, they did not base this disagreement on a claim of privilege.

In 1849 the Lords amended a money charge by making the Prisoners' Removal Bill of that year perpetual, instead of for three years only, as the Commons had made it; and the Commons submitted to the change. In 1861 the Lords struck out a limitation of the Industrial Schools Bill, and thereby extended the charge created by the Act; the Commons agreed to the amendment. The Municipal Corporations Bill of 1837, the Poor Law Loans Bill of 1871, and the Poor Law Act Amendment Bills of 1876 and 1878, are also instances of Lords' amendments in money matters being agreed to by the Commons.[2] In 1890, in the case of the Dublin Corporation Bill, the Commons, on the suggestion of the Speaker, accepted an amendment by the Lords which had the effect of altering by a private Bill rates leviable under a public Act. On that occasion, however, an effort was made to keep the claim of privilege intact by a special entry in the Journal of the House to justify and explain the course adopted.[3]

Some more recent instances may be quoted. In 1900 the Lords amended the Housing of the Working Classes Bill. They took certain expenses (I quote from Mr. Asquith's speech) "from the category of general expenses, in which the House of Commons had put them, and replaced them in the category of special expenses," which, he contended, "was a violation of the Commons' claim of privilege."[4] And Mr. Haldane further explained the effect of the amendment by showing that "the House of Lords had by its action taken away" a certain rating power from the county councils and made the rates chargeable on the place which would benefit by the expenditure.[5] The Speaker justified acceptance of the amendment on the ground that "it is an alteration that brings us back to the state of the existing law"[6]; and if that means anything it means that the Commons do not claim that the Lords shall not amend Money Bills if the effect of their amendment is to keep taxation

[1] *May's Parliamentary Practice*, p. 578.

[2] See list in *May's Parliamentary Practice*, 11th ed., p. 577n., with the significant addition of "&c."

[3] 348 *Com. Jour.*, p. 964.

[4] *Parliamentary Debates*, 4th series, 87, p. 806.

[5] *Ibid.*, p. 808.

[6] *Ibid.*, p. 808.

in statu quo—an admission of great practical importance. The proceedings in the House of Commons on the discussion of the Lords' amendments to the Local Government (Ireland) Bill of the same session may also be consulted with advantage. A claim by an Irish member that a certain amendment was a breach of privilege, elicited from the Speaker the interesting statement that "the hon. member puts it too high in supposing that the House of Lords cannot in any way touch a question of rating. In dealing with Bills relating to local government, in which rating is involved, this House has never considered that the House of Lords cannot make any amendment."[1]

This last declaration is not quoted as a doctrine newly enunciated in 1900. Well back in the nineteenth century the Commons appreciated the inconveniences which would result from pushing their claim to extreme lengths, even though the Lords submitted. By a resolution passed in 1831, adopted as a Standing Order in 1849,[2] the Commons put upon themselves a self-denying ordinance in respect to their "ancient and undoubted privileges" regarding Lords' amendments of Bills authorising, regulating, or extinguishing pecuniary penalties, forfeitures, or fees in the following cases:—When the object of the penalty or forfeiture is to secure the execution of the Act or the punishment or prevention of offences; where the fees are imposed in respect of some benefit or service under the Act, and are not payable into the Treasury or Exchequer, or in aid of public revenue, and do not form the ground of public accounting by the parties receiving the same; and when the Bill is a private Bill. And with this Standing Order may be named another,[3] whereby the Commons do not make their claim in regard to private and provisional order Bills sent down from the Lords which refer to tolls and charges for services performed, not being in the nature of a tax, or which refer to rates assessed and levied by local authorities for local purposes. That is to say, in regard to some legislation the Commons themselves have seen that to press their claim logically against the Lords, as they did in 1692, in regard to the very matters dealt with in these Standing Orders, would be simply impracticable, so long as legislation by two Houses of Parliament remains.

But then we arrive at this position. The claim to exclude the Lords from a share in taxation was (as we have seen) an illogical and unhistorical development from the old times when the Lords and Commons taxed themselves separately (though the Lords had then a share even in the

[1] *Parliamentary Debates*, 4th series, 87, p. 955.
[2] *S.O.*, No. 44.
[3] *S.O.* (Private Bills), No. 226.

taxation of the Commons); and in later times, as the business of financial legislation has developed, the Commons have had to depart yet further from logical consistency and to circumscribe their claim, first in one and then in another direction, in order to save it from breaking down altogether under the weight of impracticability to the conduct of business. That part of the claim, with its somewhat ill-defined and ragged edges, which still remains, appears therefore hopelessly indefensible from any standpoint of principle.

But before considering the matter further in that aspect, there are other points which may conveniently be noted here. To return, first, for a moment to the admitted inconveniences of maintaining the claim. I have shown how in certain directions the Commons have themselves—in view of practical needs, but with lack of logic most damaging to their claim—deliberately cut down their assertion of privilege. For the same reasons, they have in another direction pursued a different, but equally significant, course. The Government sometimes finds it desirable to introduce to Parliament, through the House of Lords, measures which contain provisions dealing with money charges. In such cases the Bill is presented and printed and discussed in the ordinary way until it gets to third reading. Then the charging provisions are omitted, and in that form the Bill is sent to the Commons, where it is printed with the charging provisions underlined and bracketed, and with a note stating that they are to be proposed in Committee. By this means the House of Commons is supposed to save its alleged privilege, or its face; but to the dispassionate observer this trick with printers' type neither adds to the dignity of Parliamentary procedure nor does it maintain intact the Commons' claim that the Lords shall not legislate on money matters; for very plainly in the case of such Bills they do, the little game of make-believe notwithstanding.[1] Other like measures are occasionally resorted to, but it would make this article unduly long to refer to them in detail. The object is in all cases the same—to allow the Lords their necessary share in financial legislation, while affecting in form to withhold it from them.

Room, however, may be found for one recent instance. When the Education Bill of 1902 was before the Lords, they inserted an amendment: "Provided that all damage due to fair wear and tear in the use of any room for the school-house for the purpose of a public elementary school shall be made good by the local education authority." But that proviso obviously

[1] *May's Parliamentary Procedure* mentions several instances illustrative of this practice, such as the Burial Grounds Bill in 1853, and the Supreme Court of Judicature Bill of 1873 (p. 581).

created a public charge; so the following words were added in brackets: "but this obligation of the local education authority shall throw no additional charge on any public funds." These words were supposed to save the Commons' "privilege." But they made nonsense of the proviso, and they were intended to be taken out in the Commons; the Lords' proviso was accepted by the Commons; the bracketed words were deleted in that House; and in the result, of course, "a charge on the people" was proposed at the instance of the Lords, and was accepted by the Commons.[1]

There is yet another direction in which the Commons have deemed it advisable to limit their claim. May puts it in these words:—"The claim to an exclusive right over financial legislation exerted by the Commons has not been extended to Bills dealing with funds set apart for the purposes of general, but not public, utility." And he illustrates by reference to certain Bills, which indicate that his statement of the doctrine is rather an understatement. He cites as Bills received by the Commons from the Lords, or amended by the Lords, without objection on the score of privilege, "Bills comprising charges upon the property of revenues of the Church or the Queen Anne's Bounty" (the Church Endowment Bill, 1843, the Ecclesiastical Commissioners (England) Bill, 1843, and the Bishopric of Manchester Bill, 1847); Bills "dealing with the property and land revenues of the Crown, the proceeds of which are not consigned by statute to the Consolidated Fund" (the Waste Lands (Australia) Bill, 1846); "and Bills applying to various purposes the fund created by the Irish Church Act."[2]

And, to make this part of the subject complete, we may note that the Commons have further cut down their claim to the extent of not contesting the Lords' right to rip out bodily from Bills clauses or series of clauses which create charges, if (in May's words) "such provisions form a separate subject in a Bill which the Lords are otherwise entitled to amend."[3] And the Lords have freely exercised this right. The Coroners Bill of 1844, the Metropolis Local Management Act Amendment Bill of 1862, and the Corrupt Practices at Elections Bill of 1863 are only instances among others of the deletion by the Lords of clauses of a financial character. The Commons' claim appears, therefore, to be confined to Bills like the Finance Bill, which are money Bills pure and simple.

There is another point upon which it is worth while to insist. It must

[1] 116 *Parliamentary Debates*, 4th series, p. 1029.
[2] *Parliamentary Procedure*, 11th ed., p. 582.
[3] *Ibid.*, p. 584.

not be supposed that since the solemn protest to the King in 1678 the Lords have accepted the Commons' claim, merely endeavouring from time to time to push it back at one point or another without contesting its validity. That is not the case. They may, as they did in 1860, receive silently a resolution of the Commons fulminating the old claim in the seventeenth century style, and acquiesce in the following year, for the sake of peace and patriotism, in what can only be described as legislation by a trick. I refer to the rejection by the Lords of the Paper Duties Bill, and the embodiment by the Commons in the following year of its proposals in a composite Finance Bill, which (as their predecessors did in 1678) the Lords passed *en bloc* rather than dislocate the national finances by raising a quarrel. But more recently the Lords, while permitting the Commons to have their own way in regard to the specific matter in hand, have at the same time placed on record their refusal to regard the claim of the Commons as the law of the Constitution. The Lords inserted a new clause into the Education Bill of 1891, and the Commons rejected it, on the ground that it "might have the effect of increasing the Parliamentary grant, at present permitted by law, to certain of the schools associated under the provisions of the clause, and thus create a further charge upon the revenue." The Lords submitted to the rejection of the clause, substituting another in its place, but, on the motion of the late Marquess of Salisbury, resolved:—"That this House, in making the said amendment, makes no admission with respect to any deductions that may be made from the reasons offered by the House of Commons and does not consent that the said reasons should be hereafter drawn into a precedent."[1]

We may now summarise our investigations and state the position which they disclose. It is this. In the early days of our Constitution the three estates of the realm—the Lords, the Commons, and the clergy—taxed themselves independently, yet there is unmistakable evidence that on those occasions when the different estates joined in a common grant of supplies, the Lords took a leading part in proposing the taxation, but that subsequently the Commons obtained the right themselves to initiate taxation proposals when such taxation affected their order. After the destruction of feudal tenure and the separate taxation of the nobility, the reason for excluding the Lords from equal participation in financial as in other legislation vanished. Owing, however, to the peculiar circumstances of the time—the truculently assertive period of the seventeenth century—the Commons, instead of abating their

[1] 123 *Lords' Journals*, pp. 424–5.

right to correspond with the changed circumstances, raised new claims designed to exclude the Lords from all participation in financial legislation—this not so much from a democratic spirit of hostility to the second Chamber as from a desire to keep finance strictly under their own control, because of certain disputes they had at that time with the Crown. With regard to the special claim that the Lords shall not amend money Bills, that was never put forward until 1661, and was then an attempted innovation quite unwarranted by the Constitution. It does not, therefore, support the claim of "ancient and undoubted privileges" which the Commons have put forward in modern times. The claim has never been admitted by the Lords, but on more than one occasion has been formally repelled by them. The so-called privilege is therefore nothing more than a contested claim lacking constitutional validity. Further, since the end of the seventeenth century, when the claim was pushed to its extreme lengths, the Commons themselves have seen the inconveniences attaching to their doctrine, and have narrowed its operation first in one and then in another direction, until to-day its extent is alike ill-defined and illogical; for if the Lords have no constitutional authority to legislate on matters which impose a charge upon the people, they have no more authority to do it in the case of private than of public Bills, in the case of Bills containing other than taxing matter than of simply tax Bills; no more authority to amend local than Imperial taxation; no more authority to reject than to impose new charges; yet in the one case the Commons have admitted, and in the other they have contested, the Lords' rights. And, as final demonstration of the untenableness of the Commons' claim, it may be recalled that when it was originated it was with reference not to a scheme of Imperial taxation, but to a Bill involving some local rating—the form of charge for which the claim of the Commons to-day is weakest, and has in part been abandoned. Constitutionally, therefore, the House of Lords is free to amend a finance Bill in any manner it chooses.

Whether the Lords should exercise their constitutional right to consider finance Bills in an ordinary legislative way is a separate question. The considerations which bear upon it may be stated in a comparatively few words: To deprive the Lords of power to amend financial legislation is to decree Single Chamber legislation in regard to what is in fact the most important part of legislation. If Dual Chamber legislation is good, *a fortiori* it is good in relation to its most important branch. All the nations of the earth whose practice is worth consideration, including ourselves back to the beginning of our Constitutional history, are of one mind as to the desirability of Dual

Chamber legislation. As Mr. Foster writes in his book on the American Constitution, "the only single legislative chambers now in existence which the researches of the writer have been able to discover are Servia, Bulgaria, Greece, the Orange Free State, San Domingo, Salvador, Honduras, Guatemala, and the Colony of British Columbia, and the history of most of them has not tended to commend the institution."[1] Other nations—the United States of America and the great States of Europe—have Second Chambers, and those Chambers wield equal authority with the other Chambers and the preservation and untrammelled exercise of that authority is cherished by the publicists and citizens of those countries as a political possession of the highest value.

Of the necessity for a Second Chamber there can be no doubt. But then there can be no reason for marking off from the purview of that Chamber what, at any rate nowadays, is the most vital department of legislation. In the early days of our national history, when a King earned the commendation of his subjects by announcing that he would adhere to the laws of Saint Edward the Confessor, or another of his predecessors, and when the desire for playing a game of kaleidoscope with the rights and obligations of citizens among themselves, or of citizens and the State, was not felt, and the making of new-fangled laws was looked at askance, the serious business of Parliament was the granting of supplies—and the Lords had their share in it. To-day, again, when readjustments to changed conditions have been effected to suit the conception of a modern free democracy in a civilized State, we are returning to the old position; and the programmes of statesmen are patent evidence that there is comparatively little of importance for Parliament to do now outside legislation of a financial character. More and more, therefore, the confining of finance to one House would reduce the other House to impotence; would involve the establishment of Single Chamber legislation; and would exhibit the grotesque situation of a State insisting upon the necessity for the deliberation and check of Dual Chamber legislation for the less important, while doing without it for the more important, part of law-making.

Such a situation is not cured by allowing the Second Chamber, by concessions in Standing Orders or make-believe tricks with printers' type, to take a hand here and there in the smaller matters of taxation. Such mitigations only relieve the practical impossibility of the situation; they do not get rid of its absurdity or its mischievousness. Nor is it enough to give the

[1] Vol. I, p. 463n.

Second Chamber power to reject a finance Bill into which is crowded a whole year's taxation. The power is a mere sham. The enormous and complex character of our national finances puts out of the question the exercise (save on the rarest and most desperate occasions) of the power to reject a whole Budget. There must be power of amendment, or there is no power at all; and as Second Chambers are pre-eminently revising bodies, power of amending financial proposals is in any case theirs by right of special appropriateness.

Finally, a glance may be given at the sentiment that the exercise by our Second Chamber of amending powers in regard to taxation proposals would be undemocratic. The sentiment is a strangely perverted one. One needs only to look, first across the English Channel, and then across the Atlantic, to the two great Republics which are typical of modern democracy. The Senates alike of France and of the United States have power to handle, by amendment as well as by rejection, measures imposing taxation in their countries. In the United States, by custom, all revenue Bills originate in the House of Representatives (though the Senate has more than once protested against this being a matter of right), but the Senate has, and freely exercises, a power of amendment; and it is not at all impressed by opposition from the other House. "Senators," writes Mr. Foster, "have been unmoved by the threats of the House to withhold supplies . . . and have only in a single instance yielded their judgment to such intimidation."[1] And Senator Hoar has stated his belief that, through the House rule which, upon the report of a conference between the two Houses, allows to its consideration immediate precedence of all other business, and no debate, the Senate has actually more influence upon appropriations than the House which originates them.

So in France. The Senate has the same right to amend, and also to initiate, finance Bills which it has in the case of all other measures.

But it may be replied that the French and American Senates are democratic, and our House of Lords is not. These two former bodies are elective in a way, it is true; but neither is directly elected. The Senators of the United States are appointed by the Legislatures of the different States; the Senators of France are chosen by delegates of the municipalities. It is significant that both these modern Republics have felt the need for so constituting their Upper Chambers that they shall not be directly representative of the electorate; we find each of them devising means for avoiding what each regards as fatal to a rightly constituted Senate—direct dependence on

[1] *On the Constitution*, Vol. I, p. 497

the ballot-box. That is to say, with all their democratic instincts they have, in framing their Constitutions, tried to approximate in some measure to our House of Lords and its independence of the poll.

Moreover, the argument from the undemocratic composition of the House of Lords has no special applicability to financial matters. If, because they are not popularly elected, the Lords may not amend money Bills, they should not be allowed to reject money Bills, and they should not be allowed to amend any Bills. The argument, to be valid, must be applied all round. On the other hand, there is a special appropriateness in revision of taxation by the House of Lords. First, it is a healthy tradition of our political life that Governments should avoid direct appeals to the cupidity of sections of the people when framing taxation proposals; and it is for that reason that, among all parties, it is regarded as "bad form" for an administration to go to the country with a Budget in its hands. Revision of taxation by the Second Chamber would help to maintain this desirable disconnection between taxation and the polling booths. Secondly, whatever other objections may be raised against the *personnel* of the peers, everyone will agree that the active members of the House comprise men who, by their position and experience, are eminently qualified to handle the difficulties of public finance.

Finally, if we are so unfortunate as to possess a Second Chamber which is at once necessary and badly constituted, the remedy is obvious:—to amend the constitution of the House, not to curtail its necessary powers. Whether any and what changes in the constitution of the House of Lords at the present time are desirable it is not the purpose of this article to inquire. It is sufficient to remind readers that the Lords are themselves at this moment proposing to amend their constitution; though it may be added that, even as constituted at present, the House of Lords as a revising body for financial legislation compares favourably with the House of Commons, from whose ranks many of its members have passed, taking with them into the Upper Chamber a ripe experience in statesmanship, which they are now free to apply without keeping their eyes perpetually fastened on the ballot-boxes or the caucuses of their old constituencies. One needs only to look at politics as they are, instead of affecting to see them as they are supposed to be, to realise that a slight alteration in the composition of the House of Lords would make it as really representative of the considered and actual opinion of the people as is the House of Commons. For it requires a specially constructed pair of spectacles to see one's own chosen representative in the nominee of a *coterie* of politicians

—a man probably unknown personally, and likely enough in many of his views antipathetic to the citizen, whose only chance of exercising his political privilege is to vote for him, or for an equally unknown and unchosen, and even more antipathetic, gentleman on the other side.

The Lords have the right to amend financial legislation. They have only let the right fall, for the most part, into practical abeyance. It is most urgently desirable that the country should adopt the practice found necessary in other civilised States, and that its Second Chamber should exercise its power to amend financial proposals. Never was the need more pressing than to-day, and never was the House of Lords more firmly established in the popular regard than it is to-day. Could the Lords, then, choose a more fitting time than the present for the reassertion of their right—a right the exercise of which is a duty to their country, and may become a very practical duty in connection with the approaching Budget ?

HARRISON AND SONS, PRINTERS, ST. MARTIN'S LANE, LONDON, W.C.